

Appl. No. 10/699,469
Docket No. 9081M
Amdt. dated October 20, 2008
Reply to Office Action mailed on June 19, 2008
Customer No. 27752

REMARKS

Claim Status

Applicants thank the Examiner for the attention shown this case and for discussing it with the undersigned while the case was on final rejection. Claims 1, 4, 5, 8 – 11, and 16 – 20 are pending in the present application. Support for the amendments to claim 1 can be found in the claims as originally filed. No new matter is added. Claims 2, 3, 6, 7, 12 – 15 and 21 – 54 are cancelled by the present amendment.

I. Rejection under 35 USC §103(a) Over Mitra 6,534,457 or Hayward 6,534,456, in view of Lavaud 5,914,117, further in view of Williams 6,429,177

All of the pending claims were rejected under 35 USC §103(a) over Mitra 6,534,457 or Hayward 6,534,456, in view of Lavaud 5,914,117, and the claims requiring an electrolyte were rejected under 35 USC §103(a) over Mitra or Hayward, in view of Lavaud, and further in view of Williams 6,429,177. By the present amendment all pending claims require an electrolyte. Accordingly, the rejection in view of Williams will be addressed.

Submitted herewith is a Declaration by Dr. Karl Wei comparing a composition according to the present invention to exemplary compositions according to both Hayward and Mitra, the two primary references cited against the present claims. In a sincere effort to progress prosecution, the present claims have been amended to more accurately reflect the composition tested by Dr. Wei. More specifically, the present invention relates to a personal cleansing article comprising a package containing a striped personal cleansing composition. There is a first stripe with a surfactant, an electrolyte, a density modifier and water. There is at least one additional stripe containing a benefit phase that is substantially free of surfactant and substantially anhydrous. The benefit phase contains a hydrophobic skin benefit agent having a Vaughan Solubility Parameter of from about 5 to about 15 (cal/cm^3)^{0.5}. Finally, the first stripe and the additional stripe have substantially the same density.

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Mitra and Hayward are related cases and they teach substantially similar compositions to one another (the cases are commonly assigned and the specifications share many similarities). They each teach a package with two separate phases. Both phases comprise water and a surfactant. One phase contains a small amount of a hydrophobic component, such as sunflower oil. Mitra and Hayward allow for the combination of these two phases in varying amounts. Accordingly, Dr. Wei recreated four compositions. More specifically, the two phases from Example 1 in the Mitra patent and the two phases from Example 2 of Hayward. The two phases from Mitra were combined in ratios of 1:99, 50:50 and 99:1, the two phases from Hayward were mixed in the same ratios to make six different compositions. The assignee of Mitra and Hayward, Unilever, manufactures and sells a bodywash called Dove All Day Deep Moisture that is similar in composition to the teachings of Mitra and Hayward. The Dove product was purchased and tested as well.

The benefit sought by the present invention is arguably the same benefit desired by Hayward, Mitra, and the Dove All Day Deep Moisture product, which is, improved miniaturization of consumers' skin when using a liquid body wash composition. The compositions of the present invention, and the prior art cited by the Examiner attempt to deliver skin benefit agents along with a surfactant composition. Accordingly, the seven compositions according to the two primary references cited by the Examiner and the one composition according to the present claims were tested for lipid deposition (the benefit agent) on human skin. All eight compositions were tested according to the protocol outlined in Dr. Wei's Declaration.

As is clear from the data generated by Dr. Wei, the compositions of the present invention deposit substantially more lipid (benefit agent) to the skin than any of the seven comparative examples. The inventive example deposited approximately 80% more lipid than the comparative example with the greatest deposition amount (Example 1 of Mitra, 50:50). And the inventive example deposited 120% more than the average of the seven comparative examples. These results are not only substantial, they are surprising and unexpected. The surprising results are achieved because the compositions of this

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invention deliver the benefit agent in a substantially different way than Mitra or Hayward. That is, the stripe containing the benefit phase is substantially free of surfactants and water. Hayward and Mitra teach that both phases should have surfactants and water, see for example, every example in each case. The present claims are amended herein to be commensurate in scope with the inventive composition that produced the surprising and unexpected results. Accordingly, the present claims are not obvious over either of Hayward or Mitra.

The Examiner relies on Lavaud for the teaching of microspheres in a personal care composition. Lavaud does not teach a multilayer composition. Therefore, Lavaud cannot teach the addition of microspheres to one phase or stripe to help equalize the density between the two different layers. Moreover, Lavaud does not make up for all the deficiencies of the two main references, Hayward and Mitra, discussed above.

Likewise, Williams is relied upon for the teaching of an electrolyte. Again, Williams does not teach a multilayer composition and therefore does not teach a composition with electrolyte in one stripe to structure the stripe as claimed herein. Moreover, Williams does not make up for the failures in the two primary references, Hayward and Mitra, discussed above.

Based on the present amendments and the supporting data showing unexpected and surprising results, it is believed that the rejection of the present claims over the combination of Mitra or Hayward in light of Lavaud and Williams is believed to be overcome.

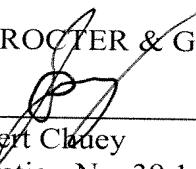
Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied references. In view of the foregoing, reconsideration of this application, and allowance of the pending claims are respectfully requested.

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Respectfully submitted,

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Date: October 20, 2008
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